COMPARISON OF

PRESENT LAW, H.R. 3525, AND

POSSIBLE CLARIFICATIONS AND MODIFICATIONS

Relating to the tax treatment of nonstatutory fringe benefits

Prepared by the staff of
The Joint Committee on Taxation

for use by

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Committee on Ways and Means

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INTRODUCTION

This document, prepared for use by the Subcommittee on Select Revenue Measures of the Committee on Ways and Means, provides a comparative description of present law, H.R. 3525 ("Permanent Tax Treatment of Fringe Benefits Act of 1983"), and possible clarifications of, and modifications to, H.R. 3525.

Item	Present law	H.R. 3525	Clarifications and proposed modifications
A. Overview	Gross income, for income tax purposes, includes all income from whatever source derived. Certain fringe benefits, such as health benefits, are excluded from gross income by statute. Present law expiring on December 31, 1983, prohibits issuance of Treasury regulations relating to the income tax treatment of non-statutory fringe benefits. FICA and FUTA apply to "wages," which includes all remuneration from employment, generally including the cash value of all remuneration paid in any medium other than cash. Certain fringe benefits, similar to those excluded from gross income, are excluded from wages by statute.	A statutory exclusion from income tax, FICA, FUTA and RRTA would be provided for: (1) no additional cost services (2) qualified employee discounts (3) working condition fringes (4) de minimis fringes (5) recreational facilities, and (6) qualified tuition reductions. Amendments would be made to the rules excluding benefits paid under cafeteria plans.	

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B. No-additional cost-service		A service provided to an employee would be excluded if: (1) the employer incurs no substantial cost (including foregone revenue) in providing the service, (2) the service is provided by the employer, and is of the same type ordinarily sold to the public by the trade or business in which the employee works, (3) the service is provided to a current or retired employee, or a spouse or child of either, and (4) nondiscrimination requirements are met (see H, below)	(2) the service also could be provided by another business with whom the employer has a written reciprocal agreement (e.g., between airlines) or by another business under common control with the employer. However, the service would have to be of the same type ordinarily sold to the public by the trade or business in which the employee works (3) the service also could be provided to a widow(er) of a former employee

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C. Qualified Employee Discount		A discount on property or services provided to an employee would be excluded to the extent it does not exceed 20 percent of the selling price (or if lower, the percentage of sales which is profit), if:	A discount on services provided to the employee could be excluded to the extent it does not exceed 20 percent of the selling price, without a profit percentage restriction. A discount on property provided to the employee could be excluded to the extent it does not exceed the profit percentage with no percentage limitation. However, no discount could be allowed for intangible property or property of a kind commonly held for investment.
		(1) the property or service is provided by the employer and is of the same type ordinarily sold to the public by the trade or business in which the employee works,	(1) the property or service also could be provided by a business under common control with the employer, if the property or service were of the same type ordinarily sold to the public by the trade or business in which the employee works,
		(2) the property or service is provided to a current or retired employee, or a spouse or child of either, and (3) nondiscrimination requirements are met (see H, below)	(2) the property or service also could be provided to a widow(er) of a former employee
		For purposes of (1), above, a department store and a leased section selling property would be treated as the same employer	

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D. Working Condition Fringe		Property or services are excluded if: (1) provided primarily for facilitating the employee's performance of service for the employer, and (2) substantially all the use is connected with the employee's performance of services	(1) employers under common control could be treated as one employer (2) the exclusion could apply only to the extent the use is connected with the employee's performances of services, so that personal use would be excluded only under the de minimis exclusion (see E, below). Further, the exclusion could apply only to property or services which would be deductible as ordinary and necessary business expenses (under Code sec. 162) if the employee had purchased them and had been reimbursed by the employer
		An auto salesman's automobile use in the dealer's sales area meets (2) if there are substantial restrictions on personal use	
		Free parking is excluded if nondiscrimination requirements are met (see H, below)	
E. De Minimis Fringe		Property or services are excluded if their value is so small, considered in the aggregate, as to make accounting for it unreasonable or administratively impracticable	

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F. Recreational Facilities		An exclusion is proposed for the value of any on-premises recreational facility provided by an employer to its employees Employers could not deduct costs of the facility, other than interest, taxes, and costs attributable to income from the facility Employers could elect to deduct costs attributable to the facility, in which case the exclusion would not apply	Employers under common control could be treated as one employer
G. Qualified Tuition Reduction		A reduction in tuition provided to an employee of an educational institution would be excluded if: (1) the tuition is for education (below the graduate level) provided by the employer, (2) the education is provided to the employee or the employee's spouse or child, and (3) nondiscrimination requirements are met (see H, below)	(1) the education could be provided by another educational institution (2) the education also could be provided to the child or spouse of a retired or deceased employee

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H. Nondiscrimination Requirements		The exclusions for no-additional-cost services, qualified employee discounts, free parking, and qualified tuition reduction are available to employees only if the property or service is provided on substantially the same terms to each member of a group of employees defined under a reasonable classification, set up by the employer, which does not discriminate in favor of officers, owners, or highly compensated employees	If the requirements are not met, the exclusion still would be available to all employees other than officers, owners, or highly compensated employees
I. Cafeteria Plans	Otherwise nontaxable benefits offered under a plan which offers a choice between taxable and nontaxable benefits ("cafeteria plan") are excluded from income only if certain conditions are met	A cafeteria plan could not offer taxable benefits other than cash or nontaxable benefits other than benefits specifically excluded under the Code, except for scholarships, educational assistance, vanpooling, and the benefits described in sections B. - F. above	Group-term life insurance (which is taxable in excess of $50,000) and vacation days which could not be cashed out in a following year also could be offered in a cafeteria plan

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J. Coordination with Other Fringe Benefit Exclusions	Various fringe benefits, such as day care and health benefits, are excluded from income if specific conditions are met	No fringe benefit (other than a de minimis fringe) would be excluded under the bill if another section of the Code provides rules for the tax treatment of that general type of benefit	
K. Effective Date		The bill generally would be effective on January 1, 1984, except that the tuition reduction provision would apply with respect to education furnished after June 30, 1984	